

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/10/2003

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA

W.P.No.20012 of 1998

01. K.Yohan
02. A.Alvin J.Anand
03. P.Paramasivam
04. S.Velmurugan
05. M.Murugan
06. R.Mathivanan
07. M.Senthilkumar
08. M.Panneerselvam
09. V.Nagarajan
10. T.Palanichamy Petitioners

-Vs-

01. The Tamil Nadu Pollution
Control Board rep.by its Chairman
32, Santhome High Road
Chennai 600 004

02. The Member Secretary
Tamil Nadu Pollution
Control Board
Chennai 600 032

03. The State of Tamil Nadu
rep. by its Secretary
to Government
Environment & Forest Department
Fort St.George
Chennai 600 009 Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for the issue of a Writ of Certiorarified Mandamus, as stated therein.

For Petitioners :: Mr.S.Balaji for
Mr.T.R.Rajaraman

For Respondents :: Mrs.Rita Chandrasekaran
for RR 1 and 2
Mrs.Selvi George for

Mr.V.S.Sethuraman
Special Govt.Pleader (F)
for R3

:ORDER

Heard the respective learned counsel appearing for the parties. The prayer in the writ petition is for quashing the impugned orders issued by the third respondent vide Ref.Lr.No.3928/EC.II/93-14 dated 25.8.93 and vide Ref.Lr.No.14029/EC.II/98-2 dated 1.7.98 and the consequential order passed by the respondents 1 and 2 in Board Proceedings vide Ref.B.P.Ms.No.47 dated 4.9.98.

1(a). The question raised relates to payment of two increments to be given by way of incentive to persons holding Master's Degree. The petitioners had been appointed as Junior Environmental Engineers (re-designated as Assistant Engineers subsequently). Such posts are to be filled up by direct recruitment. The qualification required is a Degree in Civil or Chemical Engineering provided that preference shall be given to the candidates with Master's Degree in Public Health Engineering or Environmental Engineering. Many of the petitioners are Post Graduates in Engineering either relating to Chemical Engineering or Civil Engineering whereas, some of the petitioners have Post Graduate qualification in other engineering such as Environmental Engineering or Structural Engineering. It does not require much imagination to come to a conclusion that Structural Engineering is something which is "specialised Civil Engineering" and similarly Environmental Engineering is obviously quite related to engineers working under the Pollution Control Board. The Board had sanctioned advance increments by proceedings dated 27.8.91 to the petitioners 3, 6, 8 and 9 and similarly advance increments were sanctioned to other petitioners subsequently. This was made payable with effect from the date of joining of the petitioners in the Board. Since the Board had not taken prior sanction of the Government, subsequently the Board made correspondence with the Government to accord ex post-facto sanction. The Board also made correspondence stating that the persons holding Master's Degree in other subjects, which are relevant for the purpose of Board, should also be considered. By letter dated 25.8.93 written by the Secretary to Government, such proposal of the Board to accord post-facto sanction to the Board for advance increment was refused. The relevant portion is to the following effect:-

"The Government have examined the proposal in detail and inform that the Post Graduate qualification is an essential and requisite qualification for the post of Assistant Engineers of Tamil Nadu Pollution Control Board as per Tamil Nadu Pollution Control Board Service Regulations. As such Assistant Engineers with Post Graduate qualification are not eligible for sanction of two advance increments for their possession of Post Graduate qualification. The sanction of two advance increments by the Tamil Nadu Pollution Control Board to the Assistant Engineers in various disciplines without the Government's approval is quite irregular. I am, therefore, to request you to cancel the orders sanctioning advance increments to the Assistant Engineers and recover the amount so paid, from concerned and send a report to Government to that effect."

2. Soon thereafter, the Board issued a clarification letter

to the Government wherein it was specifically indicated that as per Tamil Nadu Pollution Control Board Service Regulations, the qualification prescribed for Junior Environmental Engineer which was re-designated as Assistant Engineer, is a Degree in Civil or Chemical Engineering and possessing Post-Graduate Degree is not the minimum qualification. Subsequently, the Board made further correspondence recommending that the persons who were having Post Graduate qualification in subjects like Structural Engineering or Environmental Engineering should also be given the benefit and the benefit extended to such persons should be got approved. However, subsequently by letter dated 26.8.97, the Government again stuck to its stand reflected in the impugned letter dated 25.8.93. Similar letter was again issued on 1.7.98. After such repeated refusal by the Government, the Board passed a resolution dated 19.8.98 to the effect that since the contention of the Board was not accepted by the Government, the orders sanctioning advance increments should be cancelled and the amounts paid should be recovered. At this stage, the writ petition has been filed.

3. A counter affidavit has been filed by the Board wherein the Board has again clarified the position that the minimum qualification required for the post of Junior Environmental Engineer which was subsequently re-designated as Assistant Engineer, was a Degree in Civil or Chemical Engineering and only preference was given to candidates having Master's Degree in Public Health Engineering or Environmental Engineering. However, it has been indicated that in view of the stand taken by the Government, the Board was forced to pass the impugned resolution.

4. A counter affidavit has been filed by the Government wherein various events have been narrated and the order passed by the Government in 1993 is sought to be justified.

5. After hearing the respective learned counsel appearing for the parties and after going through the relevant documents, there is no doubt in my mind that the impugned order issued in 1993 is obviously an outcome of confusion in the mind of the Government regarding the qualification required for the post of "Assistant Engineer". It is not disputed that as per the Board's Regulations, Sl.No.3 relates to Junior Environmental Engineer which was subsequently re-designated as " Assistant Engineer". As opposed to this, there is a separate post of "Assistant Environmental Engineer" which is a promotional post wherein the minimum qualification is a Master's Degree in Public Health Engineering or Environmental Engineering and experience as Junior Environmental Engineer for a period of not less than five years. By some mysterious process, the Government at every stage thought that for the post of Junior Environmental Engineer which was re-designated as " Assistant Engineer", the minimum qualification is a Post Graduate Degree in Engineering. This is obviously an error of record. There cannot be any doubt that for the post of Junior Environmental Engineer which was subsequently re-designated as "Assistant Engineer", the requirement is a Degree in Civil or Chemical Engineering and only preference is given to candidates having Master's Degree in Public Health Engineering or Environmental Engineering. To give preference to a person having higher qualification is not the same as saying that the

minimum qualification is a Master's Degree. The minimum qualification remains a Degree in Civil or Chemical Engineering, but, where persons having higher qualifications are available, obviously they have to be given the preference. This basic confusion has permeated the impugned order in 1993 which has been subsequently blindly reiterated in the orders passed by the Government in 1997/1998 and ultimately the Board has been forced to pass the resolution withdrawing the sanction.

6. Learned counsel appearing for the State has contended that such incentive can be given only to such persons who are holding Post Graduate Degree in Civil or Chemical Engineering. However, from the letter issued by the Government dated 19.3.92 at page 11 of the typedset of papers, it appears that the Government had sought for a clarification as to such incentive can be given when persons have satisfied the following norms:-

"(i) The additional qualification in question should not be essential qualification for the post held by the individual.

(ii) The qualification should directly have an utility value for the functions of the post held by the individual."

From the aforesaid letter, it is obvious that if the qualification has directly an utility value for the function of the post held by the individual, incentive can be given. By no stretch of imagination one can say that person working under the Pollution Control Board with a Post Graduate Degree in Environmental Engineering is of no utility value for the functions required of the post. Similarly, Structural Engineering being a higher qualification for Civil Engineers, there cannot be any justification for denying such benefit to those having Master's Degree in Structural Engineering, when such benefit is made available to those having Master's Degree in Civil Engineering. It is thus obvious that the Board while according sanction of increments to the persons concerned had applied its mind properly, but subsequently such action has not been ratified by the Government on a wrong notion about the minimum qualification.

7. For the aforesaid reasons, I am inclined to quash the orders dated 25.8.93 and the subsequent orders issued by the Government dated 1 .7.98 as well as the resolution by the Board dated 4.9.98.

8. It is also to be noticed that even assuming that the petitioners were not entitled to such increments at that stage, the increments having been already given and paid to them, question of recovery of the money from them does not arise. The mistake, if any, was of the Board and since money had already been paid and utilised, it was most improper and inequitable on the part of the Government/Board to insist upon recovery of such amount.

9. In view of the above, the impugned orders are quashed and the writ petition is allowed. No costs.

Index: Yes

Internet: Yes

To

01. The Chairman
Tamil Nadu Pollution Control Board
32, Santhome High Road
Chennai 600 004

02. The Member Secretary
Tamil Nadu Pollution Control Board
Chennai 600 032

03. The Secretary to
Government of Tamil Nadu
Environment & Forest Department
Fort St.George
Chennai 600 009

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